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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 CARLOS MUNOZ,

12 Plaintiff,

13 v.

14 PETERSON RECOVERY GROUP;
15 WESTERN RECOVERY; JOHN DOE 1;
16 JOHN DOE 2,

17 Defendants.
18
19

Case No. 1:21-cv-01026-AWI-HBK

ORDER GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*

(Doc. No. 2)

ORDER DIRECTING PLAINTIFF TO SHOW
CAUSE WHY THIS COURT HAS
JURISDICTION, FILE AN AMENDED
COMPLAINT, OR VOLUNTARILY DISMISS
THE ACTION

TWENTY-ONE DAY DEADLINE

20 Carlos Munoz initiated this action by filing a *pro se* civil complaint against Peterson
21 Recovery Group and Western Recovery on June 29, 2021. (Doc. No. 1, Complaint). Pending
22 before the Court is Plaintiff's motion for leave to proceed *in forma pauperis*. (Doc. No. 2). Upon
23 review of the motion, the Court finds Plaintiff's declaration satisfies the requirements under §
24 1915(a)(1) and will grant the motion.

25 Nonetheless, the Court will direct Plaintiff to Show Cause why this Court has jurisdiction
26 and direct him to file an amended complaint. The Complaint names Peterson Recovery Group
27 and Western Recovery as Defendants. (Doc. No. 1 at 1). Defendants appear to be collection
28 agencies. The Complaint also names two John Doe Defendants, who he identifies as working at

1 the “collection agency.” (*Id.* at 3). Plaintiff checks the box beside “federal question” as the basis
2 for the federal court jurisdiction, but writes “unknown” when asked about the federal statutes,
3 federal treaties, and/or provisions of the United States Constitution that are at issue in this case to
4 support the basis for federal question jurisdiction. (*Id.* at 3-4).

5 The Court is required to *sua sponte* inquire whether it has proper subject matter
6 jurisdiction of a case. “Federal courts are courts of limited jurisdiction.” *Home Depot U.S.A.,*
7 *Inc. v. Jackson*, ____ U.S. ____, 139 S.Ct. 1743, 1745 (2019) (citations omitted). Article II, § 2
8 of the Constitution delineates “the character of the controversies over which federal judicial
9 authority may extend.” *Id.* (citations omitted). “And lower federal-court jurisdiction ‘is further
10 limited to those subjects encompassed within a statutory grant of jurisdiction.’” *Id.*

11 A federal court has subject matter jurisdiction of a case when it raises a federal question,
12 or when diversity jurisdiction exists. *See* 28 U.S.C. §§ 1331, 1332(a); *see also Home Depot USA*
13 *139 S.Ct. at 1745.* Federal question jurisdiction “affords parties a forum in which to vindicate
14 federal rights,’ whereas diversity jurisdiction provides ‘a neutral forum’ for parties from different
15 States.” *Id.* at 1746. Diversity jurisdiction requires complete diversity of citizenship among the
16 opposing parties and an amount in controversy greater than \$75,000.00, exclusive of interests and
17 costs. 28 U.S.C. § 1332(a). Citizenship requires physical presence and the intent to remain.
18 *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989).

19 The Complaint neither references any federal law nor federal statutes at issue. (*See* Doc.
20 No. 1 at 4). Thus, the Complaint fails to invoke jurisdiction under 28 U.S.C. § 1331. Further,
21 both diversity and the amount in controversy are unclear to invoke jurisdiction under 28 U.S.C. §
22 1332(a).

23 Additionally, the Complaint is devoid of any facts to state a sufficient claim. The
24 Complaint states Plaintiff was notified of insufficient funds and apparently was contacted to
25 collect on the checks and warned that he may be subject to criminal prosecution. Doc. No. 1 at 5.
26 As relief, Plaintiff states “Open to Whatever.” *Id.* at 6. A complaint must contain “a short and
27 plain statement of the claim showing the pleader is entitled to relief. . .” Fed. R. Civ. P. 8(a)(2).
28 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause

1 of action, supported by mere conclusory statements, do not suffice,” *Iqbal*, 556 U.S. at 678
2 (citations omitted), and courts “are not required to indulge unwarranted inferences.” *Doe I v.*
3 *Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
4 omitted). While factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 556
5 U.S. at 678. If the court determines that a pleading could be cured by the allegation of other facts,
6 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the action.
7 *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of*
8 *Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). A district court should not, however, advise the litigant
9 on how to cure the defects. Such advice “would undermine district judges’ role as impartial
10 decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131
11 n.13.

12 Based on the foregoing, Plaintiff must respond to this Order to Show Cause addressing the
13 jurisdictional issues, and file an Amended Complaint identifying the jurisdictional basis for this
14 Court and correct the pleading deficiencies set forth above. If Plaintiff believes he cannot
15 properly invoke this Court’s jurisdiction to hear his claim, he may voluntarily dismiss this case
16 without a court order by filing a Notice of Voluntary Dismissal. Fed. R. Civ. P. 41(a)(1).

17 Accordingly, it is **ORDERED**:

- 18 1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. No. 2) is granted.
- 19 2. Within twenty-one (21) days from the date on this order, Plaintiff must file a Response
20 to this Order to Show Cause and file an Amended Complaint. Alternatively, Plaintiff may file a
21 Notice of Voluntary Dismissal.
- 22 3. Failure to comply with this order may result in the dismissal of this case.

23
24 IT IS SO ORDERED.

25 Dated: June 30, 2021

26 
27 HELENA M. BARCH-KUCHTA
28 UNITED STATES MAGISTRATE JUDGE